UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

LLOYD CHARLES COLEMAN

PRISONER

v. Case No. 3:05-cv-981 (SRU)

THERESA LANTZ,
DAVID N. STRANGE,
CHRISTINE WHIDDEN,
JAMES WORTHAM, and
R. MARTINEZ.

RULING AND ORDER

Lloyd Charles Coleman ("Coleman"), an inmate confined at the Carl Robinson Correctional Institution in Enfield, Connecticut, brings this civil rights action pro se and in forma pauperis pursuant to 28 U.S.C. § 1915. Coleman alleges that defendants Wortham and Martinez failed to protect him from assault by another inmate while he was confined at Osborn Correctional Institution in Somers, Connecticut. Coleman seeks damages only. For the reasons that follow, the claims against defendants Lantz, Strange and Whidden are dismissed.

I. Standard of Review

Coleman has met the requirements of 28 U.S.C. § 1915(a) and has been granted leave to proceed in forma pauperis in this action. Pursuant to 28 U.S.C. § 1915(e)(2)(B), "the court shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious; . . . fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i) - (iii). Thus, the dismissal of a complaint by a district court under any of the three enumerated sections in 28

U.S.C. § 1915(e)(2)(B) is mandatory rather than discretionary. See Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000).

"When an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness under § 1915(e)(2)(B)(i) even if the complaint fails to 'flesh out all the required details.'" Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998) (quoting Benitez, 907 F.2d at 1295).

> An action is "frivolous" when either: (1) "the 'factual contentions are clearly baseless,' such as when allegations are the product of delusion or fantasy;" or (2) "the claim is 'based on an indisputably meritless legal theory.'" Nance v. Kelly, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam) (quoting Neitzke v. Williams, 490 U.S. 319, 327, 109 S. Ct. 1827, 1833, 104 L. Ed. 2d 338 (1989). A claim is based on an "indisputably meritless legal theory" when either the claim lacks an arguable basis in law, Benitez v. Wolff, 907 F.2d 1293, 1295 (2d Cir. 1990) (per curiam), or a dispositive defense clearly exists on the face of the complaint. See Pino v. Ryan, 49 F.3d 51, 53 (2d Cir. 1995).

Livingston, 141 F.3d at 437. The court exercises caution in dismissing a case under section 1915(e) because a claim that the court perceives as likely to be unsuccessful is not necessarily frivolous. See Neitzke v. Williams, 490 U.S. 319, 329 (1989).

A district court must also dismiss a complaint if it fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii) ("court shall dismiss the case at any time if the court determines that . . . (B) the action or appeal . . . (ii) fails to state a claim upon which relief may be granted"); Cruz, 202 F.3d at 596 ("Prison Litigation Reform Act . . . which redesignated § 1915(d) as § 1915(e) [] provided that dismissal for failure to state a claim is mandatory"). In reviewing the complaint, the court "accept[s] as true all factual allegations in the complaint" and draws inferences from these allegations in the light most favorable to the

plaintiff. Cruz, 202 F.3d at 596 (citing King v. Simpson, 189 F.3d 284, 287 (2d Cir. 1999)). Dismissal of the complaint under 28 U.S.C. § 1915(e)(2)(B)(ii), is only appropriate if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id. at 597 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

In addition, "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim," the court should permit "a pro se plaintiff who is proceeding in forma pauperis" to file an amended complaint that states a claim upon which relief may be granted. Gomez v. USAA Federal Savings Bank, 171 F.3d 794, 796 (2d Cir. 1999).

In order to state a claim for relief under section 1983 of the Civil Rights Act, Coleman must satisfy a two-part test. First, he must allege facts demonstrating that the defendant acted under color of state law. Second, he must allege facts demonstrating that he has been deprived of a constitutionally or federally protected right. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986).

II. Allegations

On August 24, 2004, Coleman and inmate Bravo were in the recreation yard at Osborn Correctional Institution under the supervision of defendants Wortham and Martinez. Coleman and Bravo began arguing. Defendant Wortham intervened and told both inmates that they would be sent back to their cells if they continued to argue. As Coleman walked away, the inmates "exchanged words."

Bravo then charged Coleman and "began swinging." Coleman defended himself against the attack while defendants Wortham and Martinez watched. Coleman avoided Bravo's punches

and returned one punch to Bravo's head. Bravo fell to the ground. Coleman walked over to defendant Wortham and extended his arms to be handcuffed. Defendant Wortham directed Coleman to turn around to be handcuffed from behind. Defendant Martinez intervened and ordered Coleman to lie down on his stomach. Coleman complied and defendant Martinez straddled Coleman's back. While Coleman was being restrained by defendant Martinez, Bravo ran up and began kicking and punching Coleman in the face. Coleman tried to get back to his feet to defend himself, but defendant Martinez prevented him from doing so. Neither defendant Martinez nor defendant Wortham attempted to restrain Bravo.

Finally, other inmates restrained Bravo long enough for Coleman to get to his feet. Bravo and Coleman resumed fighting and Coleman "slammed him to the ground and began raining punches." Defendant Martinez ordered Coleman to stop. At that time, Bravo was in a fetal position. Defendant Martinez put herself between the two inmates and moved Bravo away from Coleman. Coleman was treated for four fractures to his nose and eye area and continues to suffer from migraine headaches in the area of the fractures. Coleman served eight days in punitive segregation as a result of the incident.

III. Discussion

Coleman alleges that the defendants failed to protect him from Bravo. Coleman does not specify the capacity in which he has named the defendants. Because he specifies only damages in his prayer for relief, the court considers the complaint to be against the defendants in their individual capacities only.

It is settled law in this circuit that in a civil rights action for monetary damages against a defendant in his individual capacity, a plaintiff must demonstrate the defendant's direct or

personal involvement in the actions which are alleged to have caused the constitutional deprivation. See Wright v. Smith, 21 F.3d 496, 501 (2d Cir. 1994). "A supervisor may not be held liable under section 1983 merely because his subordinate committed a constitutional tort." Leonard v. Poe, 282 F.3d 123, 140 (2d Cir. 2002). Section 1983 imposes liability only on the official causing the violation. Thus, the doctrine of respondeat superior is inapplicable in section 1983 cases. See Blyden v. Mancusi, 186 F.3d 252, 264 (2d Cir. 1999); see also Monell v. New York City Dep't of Social Servs., 436 U.S. 658, 692-95 (1978).

> [A] supervisor may be found liable for his deliberate indifference to the rights of others by his failure to act on information indicating unconstitutional acts were occurring or for his gross negligence in failing to supervise his subordinates who commit such wrongful acts, provided that the plaintiff can show an affirmative causal link between the supervisor's inaction and [his] injury.

Leonard, 282 F.3d at 140.

Defendant Lantz is identified in the case caption as Commissioner of Corrections. Defendants Strange and Whidden are identified as the wardens of Osborn Correctional Institution and Carl Robinson Correctional Institution. Coleman does not reference these defendants anywhere in his statement of facts. Thus, the complaint appears to name these three defendants only because they hold supervisory positions. Because Coleman has alleged no facts demonstrating any link between these defendants and the isolated incident underlying the complaint, the complaint is dismissed as to defendants Lantz, Strange and Whidden for failure to state a claim upon which relief may be granted.

IV. Conclusion

The claims against Lantz, Strange and Whidden are **DISMISSED** without prejudice

pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)

To enable the U.S. Marshal to effect service of the complaint on defendants Wortham and Martinez, Coleman is directed to complete for each of these two defendants a Marshal service form using the defendant's complete name and current work address, and one set of Notice of Lawsuit and Waiver of Service of Summons forms. Coleman shall return the completed forms and two copies of his complaint to court within **twenty** days of the date of this order. Coleman is cautioned that failure to return the forms in a timely manner to the Clerk at 915 Lafayette Boulevard, Bridgeport, CT 06604, may result in the dismissal of this case as to defendants Wortham and Martinez without prejudice and without further notice from this court.

Upon receipt of the forms, the Clerk is directed to forward the appropriate papers to the U.S. Marshal. The U.S. Marshal is directed to serve the complaint on defendants Wortham and Martinez in their individual capacities and file returns of service within **sixty (60)** days from the date the service packets are delivered to the U.S. Marshal.

SO ORDERED this 14th day of December 2005, at Bridgeport, Connecticut.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge